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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Western Sahara

Working paper prepared by the Secretariat

Contents

		Paragraphs	Page
I.	Report and good offices of the Secretary-General	1–29	2
II.	Consideration by the Security Council	30–35	8
III.	Consideration by the General Assembly	36–43	8

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I. Report and good offices of the Secretary-General

1. Pursuant to General Assembly resolution 57/135 of 11 December 2002, the Secretary-General submitted to the Assembly at its fifty-eighth session a report on the question of Western Sahara (A/58/171). The report covered the period from 1 July 2002 to 30 June 2003 and reviewed the activities carried out by the Secretary-General in the exercise of his good offices.

2. During the period under review, the Secretary-General submitted three reports to the Security Council on the situation concerning Western Sahara (S/2003/565 and Corr.1, S/2003/1016 and S/2004/39), pursuant to Council resolutions 1469 (2003) of 25 March 2003, 1495 (2003) of 31 July 2003 and 1513 (2003) of 28 October 2003.

3. In its resolution 1469 (2003), the Security Council decided to extend the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 31 May 2003 and requested the Secretary-General to provide a report on the situation by 19 May 2003 as proposed by the Secretary-General in his letter of 19 March 2003 to the President of the Council (S/2003/341).

4. Pursuant to Security Council resolution 1469 (2003), the Secretary-General submitted to the Council a report (S/2003/565 and Corr.1) in which he informed the Council that during the reporting period, his Special Representative, William Lacy Swing (United States of America), had continued his regular contacts with representatives of the Government of Morocco and the Frente Popular para la Liberación de Saguía el-Hamra y del Río de Oro (Frente POLISARIO). In addition, Mr. Swing had met regularly with senior officials of the parties and of neighbouring countries during his visits to Rabat, Tindouf, Algiers and Nouakchott.

5. The Special Representative had also met with senior officials from the International Committee of the Red Cross (ICRC), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the World Food Programme (WFP) in Geneva and Rome to discuss the resolution of pending humanitarian issues related to the conflict, including the implementation by UNHCR, in cooperation with MINURSO, of confidence-building measures.

6. On the military side, MINURSO ground and air patrols continued to visit and inspect, on both sides of the defensive sand wall, or berm, Royal Moroccan Army and Frente POLISARIO ground units larger than company size in accordance with the ceasefire arrangements with both sides. MINURSO continued to cooperate with the parties on the marking and disposal of mines and unexploded ordnance.

7. With regard to the Saharan refugees in the Tindouf camps, UNHCR and the Special Representative held discussions with the parties in November and December 2002 on the implementation of the UNHCR confidence-building measures. The Governments of Algeria and Mauritania were also consulted with regard to the proposed activities. After consultations, both parties formally concurred with the commencement of limited UNHCR-operated telephone and personal mail services. A day after the start of the free one-way telephone service between the "27 February" refugee camp and the Territory, the Frente POLISARIO requested that the service be suspended so that it could put in place logistical arrangements, enabling the refugees from other, distant camps with no telephone service to travel to the UNHCR telephone centre to use the service. One month later, the telephone line had not yet been reactivated. The two-way personal mail exchange between the Tindouf

refugee camps and the city of Laayoune in the Territory had not been inaugurated either, pursuant to the request of the Government of Morocco, pending further technical discussions with UNHCR.

8. In paragraphs 23 to 49 of his report, the Secretary-General assessed the progress and problems with regard to the situation in Western Sahara since the appointment of his Personal Envoy. He recalled that in March 1997, after repeated breakdowns in the identification process, especially a particularly long impasse from the end of 1995 to the beginning of 1997, he had appointed James A. Baker III as his Personal Envoy. The Secretary-General had asked Mr. Baker to assess, in consultation with the parties, the feasibility of implementing the settlement plan in its current form, to examine whether there could be adjustments acceptable to the parties that would significantly improve the chances of implementing it in the near future and, if not, to advise him on other possible ways of resolving the conflict. After a tour of the region during which he had consulted with the leadership of the parties and neighbouring countries, the Personal Envoy informed the Secretary-General that, despite the difficulties and delays in the process, neither side had indicated any willingness to pursue any political solution other than the implementation of the settlement plan.

9. The Personal Envoy then organized a series of meetings of the parties from June to September 1997, which neighbouring countries also attended, thus marking the first time in many years that the two parties had met face-to-face to discuss substantive matters. During the last meeting, held from 14 to 16 September 1997, the parties reached agreement on the Houston Accords (S/1997/742, annex III), which allowed for the resumption of the identification process and, therefore, the implementation of the settlement plan. Despite the agreement that had been reached, difficulties in the identification process continued and, by the time it was completed, in December 1999, MINURSO had received 131,038 appeals. The Secretary-General pointed out in his report that the appeals process promised to be even lengthier, as well as more cumbersome and contentious, than the identification process, which had lasted five and a half years.

10. Three meetings were held under the auspices of the Personal Envoy during the summer of 2000, during which both sides failed to come up with an agreement on concrete solutions to the multiple problems of the settlement plan. During those meetings, the Personal Envoy expressed concern that the parties had failed to negotiate a solution to the problems owing to the high level of animosity between them. In his view, neither side had shown any disposition to depart from a winner-take-all mentality or appeared willing to discuss any possible political solution in which each could achieve some, but not all, of what it wanted, allowing the other side to achieve the same. During the third meeting, held in Berlin on 28 September 2000, the Personal Envoy asked the parties whether, without abandoning the settlement plan, they would be willing to pursue a political solution that might or might not be confirmed by a later referendum. The Frente POLISARIO responded that it was not ready to discuss anything outside the settlement plan. For its part, the Moroccan delegation stated that it was prepared to initiate a sincere and frank dialogue with the Frente POLISARIO, with the assistance of the Personal Envoy, to work out a lasting and definitive solution that would take into account the sovereignty and territorial integrity of Morocco, as well as the specifics of the region, in compliance with the democratic and decentralization principles that Morocco wished to develop and apply, beginning with the Sahara region. The Frente

POLISARIO rejected the Moroccan proposal and reiterated that it would cooperate and pursue dialogue only in the context of the settlement plan.

11. In early 2001, the Personal Envoy was able to determine that Morocco, as the administrative Power in Western Sahara, was prepared to support a draft framework agreement on the status of Western Sahara (S/2001/613, annex I), that envisaged a devolution of authority to the inhabitants of the Territory, with final status to be determined by a referendum five years later. Once he had ascertained the willingness of the Government of Morocco to support the draft framework agreement, the Personal Envoy presented it to the Government of Algeria and to the Frente POLISARIO, which provided their views on the agreement (ibid., annexes II and IV). In view of the strong reservations expressed by the Government of Algeria and the unwillingness of the Frente POLISARIO to consider the draft framework agreement, the Security Council adopted resolution 1359 (2001), in which it supported the Secretary-General's proposal to invite all parties to meet directly, or through proximity talks under the auspices of the Personal Envoy, to discuss the draft framework agreement and to negotiate any specific changes to it. The Council also encouraged the parties to discuss any other proposal for a political solution that might be put forward by them to arrive at a mutually acceptable agreement.

12. Following the adoption of resolution 1359 (2001), the Personal Envoy met with high-level representatives of the Frente POLISARIO and the Governments of Algeria and Mauritania at Pinedale, Wyoming (United States), in August 2001. Neither the Government of Algeria nor the Frente POLISARIO had been willing to engage in a detailed discussion of the draft framework agreement. Subsequently, the Personal Envoy met with President Abdelaziz Bouteflika and other high-level representatives of the Government of Algeria and then twice with King Mohammed VI of Morocco and high-level officials of the Government of Morocco. Since the Secretary-General had already indicated in previous reports that, in the view of the Personal Envoy, it was highly unlikely that the settlement plan could be implemented in its current form in a way that could bring about an early, durable and agreed resolution of the dispute over Western Sahara, he recalled that in his report of 19 February 2002 (S/2002/178) he had presented four options, which the Security Council could have considered in addressing the conflict over Western Sahara.[1] The Secretary-General further recalled that the Council had not been able to agree on any of the options but had expressed instead, in its resolution 1429 (2002), its continued strong support for his efforts and those of his Personal Envoy to find a political solution to the long-standing dispute, and had invited the Personal Envoy to pursue those efforts, taking into account the concerns expressed by the parties. The Council had also expressed its readiness to consider any approach providing for self-determination that might be proposed by the Secretary-General and his Personal Envoy, consulting, as appropriate, others with relevant experience.

13. Pursuant to that request, the Personal Envoy, assisted by a constitutional expert, drafted the peace plan for self-determination of the people of Western Sahara (S/2003/565 and Corr.1, annex II), which he presented and explained to the parties and neighbouring countries during his visit to the region from 14 to 17 January 2003. The Personal Envoy also shared the peace plan with the members of the Security Council in early March 2003. The Secretary-General stated his belief that the peace plan provided a fair and balanced approach to a political solution to the question of Western Sahara, providing each side with some, but not all, of what it wanted. The peace plan incorporated elements of the draft framework agreement

that had been accepted by the Government of Morocco, as well as elements of the settlement plan and the Houston Accords, which had been agreed to by both sides and favoured by the Frente POLISARIO. In addition, the peace plan envisaged a period of transition during which there would be a division of responsibilities between the parties before the holding of a referendum for self-determination that would provide the bona fide residents of Western Sahara with an opportunity to decide their future. Unlike the settlement plan, the peace plan did not require the consent of both parties at each step of its implementation. The responses of the parties and neighbouring countries to the peace plan were provided in annex III to the report of the Secretary-General (S/2003/565).

14. In the conclusion of the report, the Secretary-General observed that the main objection of the Government of Morocco to the peace plan seemed to be that, in the referendum to determine the final status of Western Sahara, one of the ballot choices was independence, although that was also one of the two ballot choices under the settlement plan that the Government of Morocco had accepted. The Secretary-General pointed out that it would be difficult to envision a political solution that, as required by the Security Council in its resolution 1429 (2002), would provide for self-determination but would preclude independence as one of the several ballot questions. He proposed an amendment to the peace plan that could assuage Morocco's concern over the ballot for the referendum consisting of a third ballot choice that would provide for "continuation of the division of authority set forth in article III of the peace plan"; in other words, self-government or autonomy.

15. The Frente POLISARIO, in turn, objected to the peace plan because it was not the settlement plan and suggested that the parties revert to the implementation of the settlement plan, with two new elements: that the Identification Commission process all 130,000 appeals, with no requirement that sheikhs participate and with the Commission's decision accepted as final; and (b) that a mechanism be added to provide for enforcement of the results of the referendum under Chapter VII of the Charter of the United Nations. The Secretary-General observed that, even with the two new elements, the consent of the parties would still be required at every stage of the implementation of the settlement plan, and that it would be difficult to envision Morocco consenting to the proposal of the Frente POLISARIO. It appeared quite unlikely that the Council would decide to add a Chapter VII mechanism to enforce the results of the referendum, given that the Council would not choose one of the four options set out in the report of the Secretary-General of 19 February 2002 (S/2002/178) because the parties would not consent or agree to one of them.

16. The Secretary-General noted that after more than 11 years and an amount of assessed contributions close to $500 million, it should be acknowledged that the Security Council was not going to resolve the problem of Western Sahara without asking that one or both of the parties do something that they would not be otherwise prepared to do. The Secretary-General recommended that the Council endorse the peace plan, which his Personal Envoy had developed as a fifth option, and asked the parties to agree to it and to work with the United Nations to implement it. In order to give the Council sufficient time to reflect on its decision, he proposed that the mandate of MINURSO be extended until 31 July 2003.

17. On 31 July 2003, the Security Council adopted resolution 1495 (2003), in which it decided to extend the mandate of MINURSO until 31 October 2003. The Council continued to support strongly the efforts of the Secretary-General and his

Personal Envoy and similarly supported the peace plan as an optimum political solution on the basis of agreement between the parties and called upon the parties to work with the United Nations and with each other towards its acceptance and implementation.

18. Pursuant to Security Council resolution 1495 (2003), on 16 October 2003 the Secretary-General submitted a report (S/2003/1016) to the Council in which he informed it that, following the adoption of resolution 1495 (2003), Morocco had sent a high-level delegation on 17 September 2003 to meet with his Personal Envoy in Houston, Texas, United States. During the meeting, there had been a discussion on issues pertaining to the peace plan. The delegation of Morocco had asked for some more time to reflect and consult before giving its final response to the operative paragraphs of the resolution, in particular the second, in which the Council had called upon the parties to work with the United Nations and with each other towards acceptance and implementation of the peace plan.

19. The Secretary-General informed the Council that following the appointment of Mr. Swing as his new Special Representative for the Democratic Republic of the Congo, he intended to appoint Alvaro de Soto (Peru) as his Special Representative for Western Sahara. On 7 October 2003, MINURSO completed the transfer of all sensitive files of the Identification Commission to the United Nations Office at Geneva for safe storage. In the interest of sound management, the size of the Identification Commission was being further reduced and its staff were scheduled to be fully withdrawn from the Mission by 31 December 2003.

20. Among other developments, on 1 September 2003, ICRC repatriated to Morocco 243 Moroccan prisoners of war who had been released by the Frente POLISARIO on 14 August 2003 in response to a request by a Member State. After interviewing four individuals in the Territory, ICRC was also able to clarify the fate of the four persons who had appeared on the Frente POLISARIO list of unaccounted-for individuals. No progress was reported on the package of confidence-building measures, which would have included a limited telephone and personal mail service between the "27 February" camp in Tindouf and the Territory, despite an agreement reached by UNHCR and the parties.

21. Concluding his report, the Secretary-General called the release of the 243 Moroccan prisoners of war, the clarification of the fate of the four previously unaccounted-for persons and the agreements on the implementation of confidence-building measures positive steps. He appealed to the Frente POLISARIO to expedite, in compliance with international humanitarian law and numerous Security Council resolutions and presidential statements, the release of the remaining 914 prisoners of war, most of whom had been in detention for more than 20 years.

22. The Secretary-General recalled that the Frente POLISARIO and Morocco had informed him officially on 8 and 10 March 2003 respectively of their objections with regard to the peace plan presented to them by his Personal Envoy. By its letter of 6 July, however, the Frente POLISARIO had officially accepted the plan. He also recalled that in early July, an adjusted text of the peace plan had been circulated to the parties and neighbouring States that added a third ballot choice providing for the continuation of the division of authority set out in article III of the peace plan; in other words, self-government or autonomy. Although the peace plan had thus been adjusted to address the concerns of Morocco and further consultations had been held in Houston on 17 September 2003 between the Personal Envoy and a delegation

from Morocco, Morocco had thus far not relinquished its opposition to the peace plan. However, following those consultations, the Personal Envoy recommended that the Secretary-General accede to Morocco's request to give it more time to reflect and consult before giving its final response. The Secretary-General agreed to extend the mandate of MINURSO for three months, until 31 January 2004, and expressed hope that he would receive Morocco's response to resolution 1495 (2003) before the end of the year.

23. On 28 October 2003, the Security Council adopted resolution 1513 (2003), by which it decided to extend the mandate of MINURSO until 31 January 2004. It also requested the Secretary-General to provide a report on the situation before the end of the mandate.

24. Pursuant to resolution 1513 (2003), the Secretary-General submitted a report (S/2004/39) on 19 January 2004 in which he informed the Council that on 23 December 2003, his Personal Envoy had had a further meeting with a Moroccan delegation to discuss issues pertaining to Morocco's final response to the operative paragraphs of resolution 1495 (2003) of 31 July 2003. Given the Personal Envoy's assignment with the Government of the United States at that time, and in order to give him time to consult further with the Government of Morocco on the issue, the Secretary-General requested that the mandate of MINURSO be extended until 30 April 2004.

25. The Secretary-General further reported that his new Special Representative for Western Sahara, Mr. de Soto, had assumed his duties in Laayoune on 29 October 2003. In November 2003, the Special Representative had visited Rabat, Tindouf, Algiers and Nouakchott, where he had held introductory meetings with senior officials from the Government of Morocco, the Frente POLISARIO and the Governments of Algeria and Mauritania.

26. On 7 November 2003, the Frente POLISARIO had announced the release of a further 300 Moroccan prisoners of war who had been repatriated to Morocco on the following day under the auspices of ICRC. While he welcomed that step, which involved liberating the largest group of Moroccan prisoners ever, the Secretary-General pointed out that 613 prisoners were still in detention, most of them for more than 20 years. He reiterated his call to the Frente POLISARIO to expedite the release of all remaining prisoners of war, in compliance with international humanitarian law and numerous Security Council resolutions and presidential statements.

27. With regard to the Saharan refugees, after further consultations during the months of November and December 2003 between the Special Representative, senior UNHCR staff and Moroccan, Algerian and Frente POLISARIO authorities, the Secretary-General was pleased to report that the UNHCR-operated telephone connection between the refugee camps in Algeria and the Territory had been re-established on 12 January 2004. The telephone service between the "27 February School" camp in the Tindouf area in Algeria and the Territory was functioning and would be gradually extended to other locations. Meanwhile, discussions on the exchange of family visits had continued and a new plan of action had been submitted by the Special Representative and UNHCR to Morocco, the Frente POLISARIO and Algeria for their final consideration.

28. In the light of the positive developments following the round of consultations on confidence-building measures, the Secretary-General called upon the Frente POLISARIO, Morocco and Algeria to consent to the exchange of family visits beginning in February 2004, to be implemented by UNHCR. Following the discussions between the Personal Envoy and the Moroccan delegation, the Secretary-General recommended that the mandate of MINURSO be extended until 30 April 2004, and expressed hope that his Personal Envoy would receive Morocco's response before the end of April 2004.

29. In its resolution 1523 (2004) of 30 January 2004, the Security Council decided to extend the mandate of MINURSO until 30 April 2004. It also requested the Secretary-General to provide a report on the situation.

II. Consideration by the Security Council

30. The Security Council considered the reports of the Secretary-General (S/2003/565, S/2003/1016 and S/2004/39).

31. In its resolution 1469 (2003) of 25 March 2003, the Security Council decided to extend the mandate of MINURSO until 31 May 2003 and requested the Secretary-General to provide a report on the situation by 19 May 2003, as proposed by the Secretary-General in his letter to the President of the Council of 19 March 2003 (S/2003/341).

32. In its resolution 1485 (2003) of 30 May 2003, the Security Council decided to extend the mandate of MINURSO until 31 July 2003 in order to consider further the report of the Secretary-General (S/2003/565).

33. In its resolution 1495 (2003) of 31 July 2003, the Security Council expressed its continued support for the efforts of the Secretary-General and his Personal Envoy and for the peace plan. It also called upon the Frente POLISARIO to release all remaining prisoners of war and for both Morocco and the Frente POLISARIO to work with ICRC to resolve the fate of persons who were unaccounted for. It further called upon the parties to collaborate with UNHCR to implement confidence-building measures and for the international community to work with UNHCR and WFP in an effort to alleviate the deteriorating food situation among the refugees. The Council extended the mandate of MINURSO until 31 October 2003 and requested the Secretary-General to submit a report on progress made in implementing the resolution.

34. In its resolution 1513 (2003) of 28 October 2003, the Security Council decided to extend the mandate of MINURSO until 31 January 2004 and requested the Secretary-General to provide a report on the situation by the end of the mandate.

35. In its resolution 1523 (2004) of 30 January 2004, the Security Council decided to extend the mandate of MINURSO until 30 April 2004 and requested the Secretary-General to provide a report on the situation before the end of the mandate.

III. Consideration by the General Assembly

36. During the general debate of the fifty-eighth session of the General Assembly, a number of representatives referred to the question of Western Sahara in their

statements. During the debate in the Special Political and Decolonization Committee (Fourth Committee), held from 30 September to 16 October 2003, a number of Member States also made reference to the question of Western Sahara, namely, Algeria, Antigua and Barbuda (speaking on behalf of the Caribbean Community), Burkina Faso, the Congo, Cuba, Gabon, Guinea, Haiti, Malawi, Mozambique, Namibia, Nigeria, Papua New Guinea, Peru (speaking on behalf of the Rio Group), the United Republic of Tanzania, Senegal, South Africa, Timor-Leste, Venezuela and Zambia.

37. At its 4th meeting, on 8 October 2003, the Committee heard the following petitioners: Antonio López Ortiz, Secretary, Federación Estatal de Instituciones Solidarias con el Pueblo Saharaui; Felipe Briones Vives, International Association of Jurists for Western Sahara; Txomin Aurrekoetxea, Member, Basque Parliament (Spain); Inés Miranda Navarro, Attorney and Member, Bar Association of Las Palmas (Spain); Mouloud Said, Frente POLISARIO; Soledad Monzón Cabrera, Member, Congress for Las Palmas (Spain); Alejandro Javier Rodriguez Carrión, Professor, International Law, University of Málaga, Spain; Hilt Teuwen, Oxfam Solidarity (Belgium); Miguel Mayol i Raynal, Member of the European Parliament Intergroup "Peace of the Saharawi People"; and Vanessa Ramos, Secretary-General, American Association of Jurists.

38. At its 7th meeting, on 14 October 2003, the Fourth Committee had before it a draft resolution entitled "Question of Western Sahara" (A/C.4/58/L.4), submitted by Algeria, Angola, Barbados, Fiji, Grenada, Haiti, Lesotho, Mozambique, Namibia, Nigeria, Saint Vincent and the Grenadines, South Africa, Timor-Leste, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe, subsequently joined by Antigua and Barbuda, Belize, Burundi, Ethiopia, Jamaica, Kenya, the Federated States of Micronesia, Saint Lucia, Sierra Leone and Trinidad and Tobago.

39. At the same meeting, the Committee decided to defer action on draft resolution A/C.4/58/L.4 for 48 hours.

40. At the 9th meeting, on 16 October, the Chairman submitted to the Committee a draft resolution entitled "Question of Western Sahara" (A/C.4/58/L.6).

41. At the same meeting, the Committee decided to replace draft resolution A/C.4/58/L.4 with draft resolution A/C.4/58/L.6. The Chairman then orally amended the seventh preambular paragraph by adding commas before and after the words "concerning the peace plan".

42. Also at the same meeting, after the adoption of the draft resolution, a statement in explanation of position was made by the representative of Italy on behalf of the States Members of the United Nations that are members of the European Union; statements were also made by the representatives of Morocco and Algeria (see A/C.4/58/SR.9).

43. In its resolution 58/109 of 9 December 2003, the General Assembly expressed its support for the peace plan for the self-determination of the people of Western Sahara and for the efforts of the Secretary-General and his Personal Envoy to find a mutually acceptable political solution to the dispute over Western Sahara and commended the parties for their spirit of cooperation in supporting those efforts. It also called upon the parties to cooperate with ICRC to resolve the fate of the people unaccounted for and to release without further delay all individuals who had been held since the start of the conflict. The Assembly requested the Special Committee

on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to report on the situation in Western Sahara at its fifty-ninth session and invited the Secretary-General to submit a report, also at its fifty-ninth session, on the implementation of the resolution.

Notes

[1] The four options, which would not require the concurrence of the parties, are: (a) implementation of the settlement; (b) a revised draft framework agreement; (c) division of the Territory; (d) withdrawal of MINURSO, were discussed in detail in a previous working paper on Western Sahara prepared by the Secretariat (A/AC.109/2002/10).

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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Guam

Working paper prepared by the Secretariat

Contents

		Paragraphs	Page
I.	Background information	1–3	3
	Geography and population	1–3	3
II.	Constitutional, legal and political issues	4–16	3
	A. General	4–5	3
	B. Constitutional structure	6–8	4
	C. Legal system	9–10	4
	D. Political parties and elections	11	5
	E. Political issues	12–16	5
III.	Budget	17–28	6
IV.	Economy	29–58	8
	A. General	29–38	8
	B. Primary economic sectors	39–44	10
	1. Agriculture and fisheries	39	10
	2. Manufacturing/industry	40	10
	3. Tourism	41–44	10
	C. Finance	45–46	11
	International finance	46	11

04-27011 (E) 310304

D. Transport and communications 47–51 11

E. Water system, sanitation and utilities 52–58 12

V. Military issues 59–61 13

VI. Land issues 62 14

VII. Social conditions 63–75 15

A. General 63 15

B. Labour 64–66 15

1. General 64–65 15

2. Public service 66 15

C. Education 67–70 15

D. Public health 71 16

E. Immigration 72–74 16

F. Human rights and related issues 75 17

VIII. Environment 76 17

IX. Relations with international organizations and entities 77–78 17

A. United Nations system 77 17

B. Regional organizations and entities 78 17

X. Future status of the Territory 79–83 18

A. Position of the territorial Government 79 18

B. Position of the administering Power 80–82 18

C. Consideration by the United Nations 83 19

I. Background information

Geography and population

1. Guam[1] is the southernmost and largest of the Mariana Islands in the Pacific, situated about 1,350 miles south of Tokyo and 3,700 miles west-south-west of Hawaii. It consists of a single island of approximately 212 square miles. It comprises two distinct geological areas of about equal size. The northern part of the island is a high coralline limestone plateau and the southern region is mountainous. Apra Harbour, which is located on the central western side of the island, is one of the largest protected harbours in the Pacific and is considered to be the finest deep water port between Hawaii and the Philippines. The capital city of Guam is Hagåtña, previously known as Agana.

2. According to the United States Census Bureau's official census, the population of Guam in 2000 was 154,805, an increase of 21,653 (16 per cent) since the 1990 census.[2] An estimate for 2002 by the Bank of Hawaii set the population at 159,547.[3] According to the census, the ethnic and racial composition of Guam's population is 37 per cent Chamorro (who are indigenous to the Territory). The population from the Freely Associated States (the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau) amounts to 11,094 (an increase of 128.18 per cent since 1990), the largest group being Filipinos (40,729), and from other Asian countries, 61,172 (an increase of 30.91 per cent since 1990). The white population was 10,509, a 43.33 per cent decrease since 1990. English and Chamorro are the official languages. Among the important changes revealed in the 2000 census was a much slower population growth rate than in the previous decennial censuses. The 2000 population number of 154,805 was over 15,000 less than the 170,000 estimated before the census. Compounded growth rate in the period 1990-2000 was 1.5 per cent, rather than the earlier projection of 2.3 per cent. The sharp drop in population growth in the period 1990-2000 is not the result of a large drop in the natural increase. Rather it seems to derive from Guamanians migrating to Hawaii and other states for employment opportunities.[3]

3. Most of the population are Christians, mainly Roman Catholic (90 per cent). Other major religious denominations are Baptist, Seventh-Day Adventist, Latter-Day Saints and Episcopalian. Most other religions have adherents in Guam, including Jehovah's Witnesses, Jews, Buddhists and Muslims.[4]

II. Constitutional, legal and political issues

A. General

4. Guam was administered by the United States Department of the Navy until 1950, when the United States Congress enacted the Guam Organic Act, which established institutions of local government and made Guam an organized Territory. Since then, the Territory has been administered by the Department of the Interior. Guam is an unincorporated Territory since not all provisions of the United States Constitution apply to the island. As an unincorporated Territory, in United States law Guam is a "possession of the United States but not a part of the United States".

5. In 2002, the United States Fish and Wildlife Service decided to designate 25,000 acres of Guam, about 19 per cent of the island, as a critical habitat for the island's endangered bird and bat species. The land, which mostly belongs to the military, did not change ownership, but all federally funded projects on the land have to be reviewed to ensure they do not affect the species' native habitat. In October 2003, the Government of Guam was given more time to present an alternative solution. The Service will decide by June 2004 on whether to accept the alternative in part or in whole.[5]

B. Constitutional structure

6. Guam has a locally elected Government, which comprises separate executive, legislative and judicial branches. Universal suffrage with respect to local elections applies to Guamanians 18 years and older. Guamanians are citizens of the United States, but are not eligible to vote in the United States presidential elections while resident in the Territory. The people of Guam elect a Governor, who serves a four-year term. Guam elected its first Governor in 1970. The Governor is responsible for the general supervision and control of the executive branch and submits an annual report to the United States Secretary of the Interior for transmission to Congress. The Governor may issue executive orders and regulations, recommend bills to the Legislature, make his views known to that body and veto legislation.

7. The people also elect 15 senators who serve two-year terms in a unicameral Legislature. The Legislature may override the Governor's veto. Under the Organic Act of 1950, the United States Congress reserves the authority to annul any law enacted by the Guam Legislature.

8. In 1972, a new law gave Guam one non-voting delegate to the United States House of Representatives. The delegate, who serves a two-year term, may vote in committee but not on the floor of the House.

C. Legal system

9. The local judicial system is made up of a Superior Court and a Supreme Court led by judges appointed by the Governor and confirmed by the Legislature. Local judges are subject to confirmation by the voters every six years. A District Court judge, appointed by the President of the United States, is the head of the United States District Court for Guam. In 1998, Congress adopted an amendment to the Organic Act allowing the Guam Legislature to elect its own attorney general in 2002. Douglas Moylan was elected on 5 November 2002 for a four-year term. The Attorney General is the Chief Legal Officer of the Government of Guam. The Office of the Attorney General provides legal services to the Government of Guam and is empowered with prosecutorial authority.

10. At the beginning of 2003 a new bill was introduced to the Legislature under the title "An act to re-organize the Judiciary as the third co-equal and independent branch of the Government of Guam; to designate the Judicial Council as head of a unified Judiciary; and to amend Titles 7 and 19 of the Guam Code Annotated relative to the Judiciary and its operations." The bill, introducing major

modifications in the Guam judiciary system, was passed into law in December 2003 (Public Law 27/31).[6]

D. Political parties and elections

11. Guam has two main political parties, the Republican Party and the Democratic Party, which are local chapters of the two main United States political parties. In November 2002, Guam held general elections. The Republican candidate, Felix Camacho, defeated former Congressman Robert Underwood by 4,500 votes and was elected Governor. The Democratic candidate, Madeleine Bordallo, was elected as Guam's representative to the United States Congress. In the vote for the Legislature, the Democratic Party won nine seats, while six seats went to the Republican Party. In addition, Guamanian citizens also voted to elect the School Board, the Attorney General and the Consolidated Commission on Utilities and to revise the regulation covering the legal drinking age.[7]

E. Political issues

12. Guam has long sought to change its political status relative to the United States. In a 1976 referendum, Guamanians decided to maintain close ties with the United States, but to begin negotiations to improve the Territory's status. In 1979, the people of Guam rejected a draft constitution by a margin of five to one, mainly on the grounds that the question of political status had to be resolved before a meaningful constitution could be drafted.[8] In a 1982 run-off referendum, 73 per cent of voters opted to pursue commonwealth status with the United States. According to the Commission on Self-Determination, established in 1984 to draft a commonwealth agreement, this status was intended to be an "interim" status that would provide an opportunity for Guam to structure a better relationship with the United States.

13. In May 1986, the Commission on Self-Determination completed a draft Commonwealth Act, which, after a public education campaign, was submitted to an article-by-article vote on 8 August 1987 (see A/AC.109/1192, paras. 19-37). Voters approved the central proposal, but rejected articles empowering the Government of Guam to restrict immigration and granting the indigenous Chamorro people the right to determine the future political status of the Territory. In a further referendum in November 1987, both of these outstanding provisions were approved after they had been amended and rewritten. A summary of the main points in the draft Commonwealth Act is contained in the 2001 working paper (A/AC.109/2001/4).

14. Negotiations between the Guam Commission on Self-Determination and the United States Government over the draft Commonwealth Act began again in 1989 and continued through 1997 without resolution (see A/AC.109/2000/6, paras. 19-22, A/AC.109/1192, paras. 19-37, and A/AC.109/2018, paras. 74-83). According to a statement made by the Governor, Carl T. C. Gutierrez, to the House Resources Committee of the 105th Congress in October 1997, the position of the United States executive branch with regard to the draft Act has essentially been that it was unconstitutional insofar as it did not recognize the plenary authority of Congress over Guam.

15. In 1997, Guam public law 23-147 established a Commission on Decolonization for the Implementation and Exercise of Chamorro Self-Determination. This Commission, in concert with a process of registration of eligible voters by the Guam Election Commission, was to oversee the conduct of a vote on the Chamorro people's status preferences of independence, integration or free association in accordance with international standards.

16. In 2000, the Guam Legislature provided the Guam Election Commission with the power to set the date of the decolonization plebiscite. The plebiscite, which has now been scheduled to take place on 2 November 2004 (see para. 79 below), will ask the Territory's indigenous people, defined by law as persons or descendants of persons who were in Guam at the time of the United States ratification of the Treaty of Peace with Spain in 1898, and/or persons or descendants of persons who received United States citizenship pursuant to the Organic Act of 1950, to choose between statehood, independence or free association with the United States. The plebiscite would be non-binding but would set the course of any future status negotiations with the administering Power.

III. Budget

17. Most of the Government's revenues come from hotel occupancy and gross receipts taxes generated by activities in the tourism industry.

18. In the 2002 budget, the Governor proposed that the Government of Guam borrow up to $427 million on the bond market for government retirement expenses, tax refunds and other government debts. According to the Guam Economic Development Authority, this bond would more than double the Government's bond debt and push the island closer to the maximum allowed bond debt set by federal law. According to press reports, in March 2002 an important credit rating agency downgraded Guam's debt status from the lowest rating in the investment grade category to the category of non-investment. The agency attributed the downgrade to Guam's reliance on a weak tourism industry, a deficit of $99 million and a debt of $440 million.[9]

19. The Legislature approved the bond borrowing, but this decision was challenged by the Attorney General, Douglas Moylan, whose office argued that the borrowing violated Guam's legal debt limit. Supreme Court of Guam justices sided with the Governor on the issue, but the matter is now in the federal appeals court at the Attorney General's request.[10]

20. When the new administration took office in January 2003, following the general elections of November 2002 (see para. 11), it inherited a budgetary and cash shortfall of $283 million, the largest in Guam's history.[3] The Administration predicted that without the bond borrowing the Government would shut down in July or August 2003, with only the essential services of health, education and public safety continuing to operate. This, however, did not happen. To provide immediate relief, the Legislature narrowly approved increases in the gross receipts tax (a tax that providers of goods and services must pay for doing business in Guam) from 4 to 6 per cent, the alcohol tax and the tobacco tax, which the Governor signed in March as part of the budget bill. The legislature also took steps to cut immediately the amount of money spent on the payroll by approving a 32-hour work week for 4,500 employees, from February until late June. The Governor followed up with an

executive order to continue the shorter work week, which lasted until the beginning of August. By that time, the Government's payroll had been cut by about $1 million per day, mainly through retirement and by keeping many job openings unfilled.

21. As a long-term solution, the Governor in May 2003 submitted his fiscal 2004 budget request calling for a substantially down-sized and reorganized Government. However, none of the bills establishing these consolidations were introduced by the Legislature. An additional proposal for a 10 per cent government wage cut as a way to keep agencies running was also not introduced. However, in the Governor's state of the island address on 4 February 2004, the Governor announced that by mid-2004, 12 bills would be before the Legislature, reflecting the reorganization of the Government, reducing 48 agencies to 12 departments, as part of an economic stabilization plan. As part of the reorganization process, the administration also planned to reclassify job standards, qualifications and responsibilities government-wide.[11]

22. In May, the Governor went to Washington, D.C., to discuss his economic stabilization plan with United States government officials. The plan called for increased federal spending assistance, specifically in the areas of tourism, the military and the creation of new industries on Guam, in return for full future financial accountability.[12]

23. The financial resources of the Government have declined substantially over the past few years. Deficits have resulted mainly from tax collections falling short of current and future spending plans. According to the Bank of Hawaii,[3] resistance to the privatization of utilities and the outsourcing of other services that the private sector may offer more efficiently, has been strengthened by the absence of other well-paying jobs on the island, coupled with a long-held local tradition to avoid public employee layoffs. However, in April the Governor successfully proposed legislation to repeal and amend the provisions of law that prohibited privatization.

24. Guam's General Fund (the sum of all taxes and fees and federal funds) offers a view of Guam's shrinking economy and dwindling financial resources over the past decade. The Fund peaked at $561.5 million in 1993, and fluctuated within a narrow range of $500 million to $530 million from 1994 to 1998, suggesting that the component of the tax base, including individual and corporate taxes, showed relatively small changes that were consistent with changes in the business cycle. In 1999, the General Fund dropped to $470 million, the first time in a decade it had dropped below $500 million. In 2000 it rose slightly but was down again in 2001 to $446 million and dropped further to $336 million in 2002, 40 per cent below its peak in 1993. Projections and other preliminary figures show that the General Fund was up to $368 million in 2003, but that figure, although a sign of recovery, would still be 30.5 per cent below the peak.[3]

25. In April 2003, the Governor signed an executive order establishing the Office of Homeland Security within the Office of the Governor of Guam. The Office received $6.42 million in federal funds. For fiscal year 2004, Congress passed a $4.25 million grant to train law enforcement officials to be able to recognize and respond to a potential terrorist incident.[13]

26. In the 2004 budget for the Office of Insular Affairs, the United States Government included $15 million for mitigation aid to Guam, the Commonwealth of the Northern Mariana Islands and Hawaii. In addition, in October 2002, Guam

received $49 million as its annual share of federal funds. The money came from the collection of federal taxes from soldiers and federal employees who live and work in Guam. In December 2002, the Department of the Interior warned that the level of economic assistance that each United States Territory would receive from the Department would be determined in part by the "strength and independence" of its public auditor's office. Additionally, the responsiveness in addressing issues raised in audits would be considered in the process of awarding discretionary grants to these Governments and to other island grant recipients.[14]

27. At the beginning of 2003, Guam and the Northern Marianas established a regional partnership to improve their capacity to lobby for federal United States funds.[15]

28. During 2003, the administration established a Government Corruption Task Force under the Acting Police Chief. Working side by side with the Task Force, the Attorney General's office indicted dozens of former and current employees of the Government of Guam. The Attorney General said that he expected more indictments on government corruption cases and noted that one of the reasons his office had targeted government corruption was to recover public funds that were used for personal expenses. On 30 December 2003, a Superior Court of Guam grand jury handed down two indictments against the former Governor, Carl Gutierrez, who served two terms from 1994 to 2003. The former Governor was indicted on charges that he used more than $64,000 in government supplies and personnel to build his ranch in Urunao, Dededo. In a separate indictment, Mr. Gutierrez and the former Department of Administration Director, Clifford Guzman, were accused of having authorized the use of government funds to pay for the power bills of more than 2,000 private streetlights. The Attorney General said that there were more ongoing investigations involving Mr. Gutierrez, including an alleged illegal water hook-up at his ranch.[10]

IV. Economy

A. General

29. The Guam economy is dominated by tourism, while the public sector (including the United States military) and construction remain important. Farming and fishing are relatively well developed. Vegetables, citrus and tropical fruits, coconuts and sugar cane are grown and livestock, especially poultry, is raised. Manufacturing includes textiles, cement and plastics.[16]

30. During 2002, the economy of Guam faced different problems. In particular, the tourism industry suffered from economic slowdown and natural disasters. The industry recorded a 30 per cent decline in January 2002 caused by the September 2001 events. In the first part of 2002, it was showing signs of recovery when typhoon Chata'an struck the island in July, causing extensive damage. In December 2002, supertyphoon Pongsona damaged and destroyed tourism infrastructure and many homes and buildings. As a consequence, tourist arrivals stopped altogether while business and consumer activities slowed because power, water and telecommunications infrastructure were interrupted. According to local media reports, the Federal Emergency Management Agency and other federal agencies had

committed well over $300 million by June 2003, making Pongsona Guam's costliest natural disaster to date.[3]

31. During 2003, travel fears over the war in Iraq and the Severe Acute Respiratory Syndrome (SARS) epidemic contributed to yet another round of declining tourists, especially from Japan, which accounts for nearly 75 per cent of Guam's tourists. These global events together with the natural disasters and economic problems in the region contributed to the decline in Guam's economy that began in the mid-1990s. During the period 1999-2002, Guam's civilian labour force declined by 14.6 per cent, with a weak economy appearing to be the principal cause. This unprecedented loss has had important implications for the economy and the island's labour force, which has grown more slowly in recent years because Guamanians have migrated to the United States (see also para. 2 above).[3]

32. However, according to the Chief Economist of Guam's Department of Labor, Guam gained 450 jobs during fiscal year 2002/03, when private and government employment reached 54,940, indicating a stabilization of the economy, according to the economist. Additionally, tourist numbers started climbing during the latter half of 2003, after 30 per cent declines in the aftermath of supertyphoon Pongsona.[17]

33. Guam's economy also received a spending boost by businesses and homeowners who received federal assistance and insurance proceeds to rebuild after Pongsona. The military's post-Pongsona rebuilding projects have also benefited the construction industry (see para. 60).[10]

34. According to the two latest economic reports on Guam by the Bank of Hawaii (August 2001 and October 2003), since 1999 the flow of public information on the economy has been severely limited, thus affecting the capacity of both the public and private sectors to make informed decisions. Among the causes of poor availability of economic data are the dismantling of the Guam Finance Commission and the lack of experienced staff in the Government of Guam.

35. The economy is still affected by the 1995 decision to shut down some military facilities on the island. In early December 2002, the President of the United States signed into law a bill that set aside $75 million for military construction projects on Guam for fiscal year 2003. The amount was an increase from the $66 million in military construction projects for Guam in the previous year. The $75 million budget included $6.9 million for the third phase of the Army National Guard Readiness Center, $15.6 million for an off-base water supply for Andersen Air Force Base and $16 million for a new fitness centre at Andersen.[18] According to the Governor in his 2003 annual address, Guam was "continuing to make the case that Guam welcome[d] additional military presence."[19]

36. During 2003, the United States Secretary of Defense, Donald Rumsfeld, toured Guam's military facilities, underlining the importance of the island's location within four hours flying time from the Asian mainland. Mr. Rumsfeld made the visit as part of a tour to discuss "preliminary conclusions" of a global review of United States force posture around the world. During the year, a senior Air Force commander said there were discussions on what he called "a greater military presence in Guam in the light of some potential trouble spots in the region".[20]

37. In January 2004, the United States Air Force was quoted as saying more specifically that the Pentagon was considering rotating long-range bombers through

a giant air base in Guam as a way to off-set the army's heavy commitment of forces in Iraq.[21]

38. Guam is a duty-free port that facilitates the movement of raw materials for manufacturing. It also participates in two major trade programmes designed to promote export-oriented manufacturing: the Harmonized Tariff Schedule of the United States and the Generalized System of Preferences. Nonetheless, the Territory consistently records a trade deficit. The Department of Commerce reported a steady decline in the value of Guam's total exports. The total value was $86.4 million in 1998, $75.7 million in 1999, $73.5 million in 2000 and only $60.8 million in 2001. The main recipient of Guam exports was Japan, with a total value of $30.4 million in 2001. Major export commodities are fish and crustaceans, mineral fuels, oils and waxes, tobacco and manufactured tobacco substitutes and automobiles.[22]

B. Primary economic sectors

1. Agriculture and fisheries

39. The agriculture and fisheries sector has played a small role in the economy of Guam, accounting for less than 1 per cent of total private sector employment. The fishing industry, which began a major expansion in the late 1980s, continued to be important within the sector. In an effort to diversify the economy, Guam has begun to develop fish farms.[23]

2. Manufacturing/industry

40. One of the major industries on Guam, and the third most important economic sector (after tourism and the public sector), is construction. Construction as a generator of employment remains significantly above the average for the United States, although it has been declining during the last decade. In 2002, construction employment was up 21.7 per cent from the previous year, but accounted for only 8.7 per cent of all private sector jobs. The most likely reason for the large gain in payroll in 2002 was construction work assigned to repair damages after supertyphoon Pongsona. According to the Bank of Hawaii the most reliable predictor of future construction activity and investment in fixed assets, as measured by building permits, was Guam's building industry, which was at its lowest level in 2002 when building permits dropped below $100 million for the first time. There is the possibility for increased construction as Guam repairs the infrastructure damage of Pongsona and other sites. In addition the United States military is expected to repair and strengthen the facilities it maintains on Guam.[3]

3. Tourism

41. Guam's tourist industry as well as much of its economy is dependent on the Japanese economy and Japanese tourists. In 2001, 80.2 per cent of tourists to Guam came from Japan, 8 per cent from the Republic of Korea and only 3.7 per cent from Hawaii and the mainland United States combined.[23] In 2002, the tourist industry confirmed its dependency on the Japanese market. According to the Visitors Bureau, the December's 2002 supertyphoon would cost $45 million in lost tourism spending from Japan alone. In addition, because of Japan's long-running economic stagnation in 2002, the average Japanese tourist in Guam spent $676, compared with $1,500 average spent in 1990. During the first nine months of 2003 arrivals from Japan

were down 24 per cent — to 634,829 compared with 836,602 during the same period the previous year. However, in January 2004, overall arrivals exceeded the 100,000 mark for the first time since August 2001.[24]

42. In an effort to open up its markets to tourists from China, the Governor met in October 2003 with the Minister for Foreign Affairs of China to discuss Guam's application for China's approved destination status for Chinese tourists, while at the same time seeking the approval of the United States Government of a Guam-only visa programme for direct flights from China. Under a visa waiver system, citizens of 14 Asian countries board flights to Guam only without visas, filling out landing cards on board.[25]

43. The Government continued to pursue a diversification of the tourism industry and established the Sports Tourism Taskforce to develop and promote this market. In October 2003, the United States Travel and Tourism Promotion Advisory Board announced a $50 million national tourism promotion campaign, for which Guam was eligible to apply. Another issue that might help tourism bounce back from supertyphoon Pongsona is the National Weather Service, which has changed the way it alerts the island about storms and has set in motion a federally funded project to protect critical sections of power lines by placing them underground. The Service has new, sturdier, wind-speed equipment and will use a digital forecasting computer system, allowing the downloading of storm information.[26]

44. Guam had a total of 10,084 hotel rooms in 2001, an increase of 65 per cent since 1991. The December 2002 typhoon caused at least $100 million damage to hotels and government-run utilities and pushed two Japanese-owned hotels into bankruptcy. Two other hotels closed as a result of the 11 September travel downturn. The four closings had reduced hotel rooms by more than 10 per cent to 8,915 in 2002 and reflect occupancy rates that slumped to 57 per cent in 2002, from 87 per cent in 1995. In 2002, $16.2 million were collected in hotel occupancy taxes, down from $20.6 million in 2000.[27]

C. Finance

45. According to the Department of Commerce, bank deposits were at $1.46 million in 2002, up from $1.37 million in 2001. Bank loans decreased from $2.54 million in 2001 to $2.35 million in 2002.[28]

International finance

46. There have been no further developments since the issuance of the previous working paper (A/AC.109/2003/15).

D. Transport and communications

47. In November 2002, the United States Department of Transportation released $5.5 million in Federal Highway Administration Emergency Relief Funds for Guam. Guam will receive $368,000 for the repair and reconstruction of damages on Route 4 in the As-Alonso area caused by the 2001 earthquake, and $5,311,000 for highway repair and reconstruction for damage caused by typhoon Chata'an in 2002. In his annual address on 13 May 2003, the Governor noted that he had begun pushing for

$50 million more in federal funding assistance for highway improvements. In 2003 Guam received $1.2 million in federal funding from the United States Department of Commerce for the design of a hotel wharf expansion.

48. The Port Authority of Guam administers the commercial port facilities at Apra Harbour. It is a public corporation and an autonomous agency of the Government of Guam. Guam's port is a major trans-shipment centre of the western Pacific and is equipped to move containerized bulk and tuna cargo efficiently. In recent years, it has seen an average annual increase of 23 per cent in cargo. The Port Authority is expanding its container yard and is planning to spend $100 million in reconstruction activities up to the year 2005. The Governor is currently pursuing privatization for some of the functions of the port, such as its gantry cranes. In December 2003, it was announced that Guam would receive $518,900 in federal funding from the Department of Homeland Security as part of a national effort to enhance security at key ports and facilities.[29]

49. The refurbishment of the Guam International Airport's runway system began in 2002. The first phase of the federally funded runway extension and renovation project was launched to extend the length of the two runways and to build a new taxiway to add safety to the airport. The whole project was expected to last two years and cost $20 million.[30] At present, the Guam International Airport is the most modern in the western Pacific.[31] In May 2002, Philippine Airlines announced that it would operate new flights three times a week from Manila to Guam.[32] RCA Global Communications and IT&E handle cablegrams, facsimile and telex messages and overseas telephone calls. At the beginning of 2003, a local company launched an online text service to enable mobile communications between users of the Global System for Mobile Communications in Guam and the Philippines at a cost of $0.05 per message.[33] The United States Postal Service handles mail delivery. Commercial mail delivery is also available through Federal Express and DHL. Guam has a daily newspaper, a newspaper published three times a week, several weekly and monthly commercial publications and military journals. According to the Federal Communications Commission, there are currently 11 FM and 2 AM radio channels, 3 local television channels and 1 cable television service provider. Two major radio stations had to interrupt service after the supertyphoon Pongsona hit the Territory.[34]

50. High-technology communications may represent an emerging growth sector for Guam. The Governor and Legislature have made information technologies a priority as part of a general effort to diversify the economy. Guam serves as major telecommunications hub for the Asia/Pacific rim.

51. During the review period the Governor and the Speaker of the Guam Legislature asked the United States Government for a reduction or write-off of government debts including a $100 million Guam Telephone Authority loan. On 3 February 2003, the Guam Legislature passed a bill submitted by the Governor to advance the sale of the Guam Telephone Authority.[35]

E. Water system, sanitation and utilities

52. Approximately 74 per cent of the water supply is provided by the Guam Waterworks Authority. The remainder is produced by the Air Force and Navy installations on Guam. The Government's water sources are groundwater and surface water (Ugum River). The Navy water source is a surface reservoir (Fena

Lake) in the southern part of the island. The state of the water and sewerage system is poor. Leaks are frequent, posing significant health and environmental problems and inhibiting development.[36] In December 2002, the United States Government filed a complaint against the Waterworks Authority and the Government of Guam for repeated violations of the federal clean water and safe drinking water acts.[37]

53. According to press reports, during 2003 the Territory experienced several water shortages, notices to boil water and sewage overflows. Several towns were basically without water from August to late October. In late October, the Governor declared a state of emergency for the south, providing the agency with $250,000 to address the water problems. Part of the problem stemmed from supertyphoon Pongsona. At the end of 2003, the non-profit group Community Partners in Recovery reported 1,000 clients had still not recovered from the storm and that many of them were without power and running water.

54. In November 2002 the island elected its first Consolidated Commission on Utilities. The Commission oversees the operations of Waterworks and the Guam Power Authority. The Commission was able to convince the United States Environmental Protection Agency to give the utilities authorities a final chance before taking them over and placing them in receivership. In December 2002, the Commission asked Waterworks managers to resign by January to appoint new ones.[37]

55. The funds received from the state of emergency were used for new pumps, with an additional $100,000 to purchase large pumps for the Ugum Water Treatment Plant and its intake. After getting new Flocculator equipment and undertaking the proper application of polymers to clean the water, the agency was able to end the crisis. Work has continued to improve the Ugum plant and for the first time the agency is now producing enough water to support the entire southern part of the island.

56. At the end of the year, the Guam representative to the United States Congress announced that $300,000 in federal funding for the Guam Waterworks Authority for water and wastewater infrastructure improvements had been granted, with an additional $400,000 for a flood mitigation bridge improvement project for the Hagåtña River. According to Congresswoman Bordallo, the bridge infrastructure improvement would contribute to the revitalization of the Hagåtña area, allowing additional development and improving traffic flow and safety.

57. As a result of legislation introduced in April 2003 by the Governor to repeal and amend the provisions of law that prohibited privatization, the Guam Waterworks Authority hired a financial consultant and issued a request for proposals to hire a technical consultant to help them craft the necessary work to privatize the agency. Many worldwide companies have expressed an interest in taking over the agency and privatization is expected to become a reality by the latter part of 2004.[38]

58. The Guam Power Authority, an autonomous agency of the Government of Guam, is responsible for providing electricity throughout the island.

V. Military issues

59. Guam was administered by the United States Navy until 1950, and remains the site of extensive United States naval and air force installations. Petroleum storage,

munitions stowage, extensive communications facilities and other service industries that cater to the military establishment form the basis of the military infrastructure in Guam.

60. The United States military presence and spending on Guam have decreased considerably during the last decade. In 2000, the Navy had about 4,000 military personnel, about 4,000 dependants and 2,000-3,000 contract civilian workers. The Air Force had about 1,800 military personnel, almost 2,200 dependants and less than 400 civilian workers.[31] In March 2001, a survey conducted by the Guam Chamber of Commerce reported that 83 per cent of Guam's 445 registered voters supported an increase in military activity in Guam and agreed that it made "a positive contribution to Guam".[39] In 2002, the United States Navy transferred two Los Angeles class, fast-attack nuclear submarines in Guam, the *USS Corpus Christi* and the *USS San Francisco*. A third submarine is now expected to reach Guam in mid-2004. Relocation of these submarines will add more Navy personnel to the base at Guam. The personnel of three submarines and the submarine tender, the *USS Frank Cable*, which can perform nuclear vessel repairs, totals 650 persons.[40] In September 2003, the Department of Defense announced the award of two construction projects at Guam's Andersen Air Force Base. One project, worth $32.3 million, involved the design and construction of an aircraft maintenance hangar, which could withstand supertyphoon conditions. Upgrades to 112 housing units at the Base, worth $12.8 million, were also announced. In November the United States Senate approved the fiscal year 2004 national Defense Authorization Act, which set aside $26 million for a new medical facility at the Base and $1.7 million for the construction of a wharf fender system to assist with the docking of the submarine fleet in Guam. While the press reported that the Base was seriously being considered as a permanent home for some bomber aircrafts, the Senate Act required the Navy to submit a report within 120 days on its future plans to base aircraft carriers in Guam. In February 2004, Air Force officials announced that as part of a 90-day rotation to back up United States forces in the region, 300 military personnel and six B-52 bombers would be deployed to Guam. The United States Senate increased the number of congressional appointments from two to three allotted to the Guam Delegate's office to each of the United States military academies.[41]

61. At the beginning of 2003, the United States Department of Defense deployed 24 long-range strategic bombers to Guam.[42] The bombers returned to their home bases in the US in middle of the year.[43]

VI. Land issues

62. As reported in previous working papers, the question of land use and ownership is a major and ongoing consideration on Guam. This question comprises two major issues: (a) the return of unused or underutilized lands held by the Department of Defense; and (b) the return of these lands to the original Chamorro landowners. The United States Government, principally its Department of Defense, currently holds title under United States law to over one third of the island. This land was condemned and acquired from private landowners by the Department of Defense during the years following the Second World War, when Guam was under the administration of the United States military, initially on a year-to-year lease between 1945 and 1950 and subsequently acquired by the United States Government through eminent domain procedures after the extension of citizenship. In 1994,

Congress passed the Guam Excess Lands Act (public law 103-339) to return 3,200 acres to the people of Guam. In 2003, 143 parcels of land benefiting 2,000 families were returned, in addition to a previous total of 30 parcels of returned land.[44]

VII. Social conditions

A. General

63. There have been no further developments since the issuance of the previous working paper (A/AC.109/2003/15).

B. Labour

1. General

64. According to the Guam Department of Labor, between June 2001 and June 2002 Guam's private sector lost about 4,000 jobs and shrank to 39,490 because of lay-offs and business closures. Guam's unemployment rate was at 11.4 per cent in 2002, down from 13.5 per cent in 2001.[3]

65. In 2001, over a quarter (28 per cent) of the workforce was in the service sector, of which over a third worked in hotels and other lodging places. The retail trade sector employed 20 per cent of the workforce, transportation and public utilities accounted for another 8 per cent, the construction sector for 7 per cent and the financial sector for 4 per cent. The rest of private sector employment is made up of wholesale trade (3.3 per cent), manufacturing (2.6 per cent) and agriculture (less than 1 per cent).

2. Public service

66. Both the Government of Guam and the United States Federal Government in Guam undertook substantial downsizing measures in 2000. The Government of Guam undertook a buyout and early retirement programme and the federal Government began outsourcing functions to private contractors. As a result, employment by the Government of Guam declined by 7.2 per cent from 13,540 to 12,560 jobs in fiscal year 2000. Federal jobs declined by 30.0 per cent, from 4,530 to 3,170 jobs in the same time period. The government sector now accounts for just over 26 per cent of the total civilian employment. During the first nine months of 2003, 718 employees were moved from Guam's General Fund into federally funded jobs.[44]

C. Education

67. Guam has an extensive public and private education system. The public education system includes the University of Guam, the Guam Community College, four public high schools, seven middle schools and 27 elementary schools. The private system includes two business colleges, five high schools and several elementary schools; most of these are affiliated with Roman Catholic and Protestant religious denominations. A new bill, the Guam Charter School Act, allowed the

establishment of private charter schools independent from the Department of Education.[45]

68. For fiscal year 2004, which started on 1 October 2003 and ends on September 2004, the Department of Education received $136.6 million, $30 million short of what the new superintendent had requested while pointing out that the Department continued to suffer from a lack of essentials — air conditioning, working buses, substitute teachers, nurses, school supplies, library books and cafeteria equipment. Following supertyphoon Pongsona, the Federal Emergency Management Agency set aside more than $6 million to assist Guam in replacing damaged classrooms. In December 2003, the Federal Loan Guarantee Program was extended to Guam. Possible projects for which the Guam Housing and Urban Renewal Authority could apply for financing would include construction of schools.[46] In his 2003 state of the island address, Governor Camacho announced that over the next three years the Government would build three new high schools and four new elementary schools, to alleviate overcrowding and the need for busing and to improve the existing infrastructure.[47]

69. For the school year 2002/03, the Department of Education reported that 9,081 students were enrolled in high school, 7,554 in middle school and 14,705 in elementary school.[48]

70. One of the Department of Education's largest projects in 2003 was the financial audit for fiscal years 1998 to 2001. The audits were completed in November, but were too late to avert the attention of federal officials. In September, federal officials placed the Department on a "high risk status". With that label came sanctions, including stringent reporting requirements. Should the Department fail to meet those requirements, the federal department may take over the federal programme, or require Guam's Department to pay for the programme of their own and then seek reimbursement from the federal Government. At the beginning of 2003, the Government announced a cost-saving plan for the Department that would save about $410 million. As part of the plan, the Department furloughed 1,177 non-teaching employees for four weeks during the summer.[49]

D. Public health

71. There have been no further developments since the issuance of the previous working paper (A/AC.109/2003/15).

E. Immigration

72. A major issue in the federal Government's relations with Guam is the migration from the Freely Associated States of the Marshall Islands, Micronesia (Federated States of) and Palau. The Compact of Free Association Act of 1986, which established the relationship between the United States and the Federated States of Micronesia, and the Marshall Islands, authorized unrestricted migration from those Pacific island nations to the Territories and possessions. That enabled citizens of those islands to enter Guam and to engage lawfully in occupations as non-immigrant aliens.[50] These immigrants and their American-born children have settled in Guam, Hawaii and the Northern Mariana Islands. This has strained the resources of the recipient States and Territories.

73. In order to reimburse Guam and other compact Territories for the cost of providing government services for regional immigrants, the federal Government has issued Compact impact funding. In December 2003, the Compact of Free Association Amendments Act of 2003 was passed, renewing the original Compact of 1986 for another 20 years. Additional Compact impact reimbursement is authorized if impact costs rise above the mandatory appropriation of $30 million per year. An estimated $12 million-$14 million in annual funding is expected for Guam. At the same time, at the request of the Governor of Guam, the President is authorized to release, reduce or waive, in whole or in part, any amounts owed by the Government of Guam to the United States Government as an offset for past un-reimbursed Compact-impact costs. These costs are estimated by Guam to total $187 million.[51]

74. In addition, the immigration policies currently applied to Guam have resulted in a considerable growth in migration from countries, particularly the Philippines, into Guam. The 2000 census indicated that, while the Chamorro population stood at 65,243, the non-Chamorro population was 86,798.

F. Human rights and related issues

75. There have been no further developments since the issuance of the previous working paper (A/AC.109/2003/15).

VIII. Environment

76. Guam continues to experience environmental problems related to the United States occupation during the Second World War (see A/AC.109/2001/4, para. 83). In January 2002, the Navy agreed to pay $42,000 in fines and to spend $380,000 to improve its waste management, after the United States Environmental Protection Agency found that the Navy Public Works Center had handled hazardous waste poorly in the year 2000.[52] Supertyphoon Pongsona has also caused extensive damage to the island's ecosystem. However, how long it will take to assess and repair is still not known.

IX. Relations with international organizations and entities

A. United Nations system

77. There have been no further developments since the issuance of the previous working paper (A/AC.109/2003/15).

B. Regional organizations and entities

78. Guam is a member of the secretariat of the Pacific Community, a 27-member organization dedicated to providing technical advice, assistance, training and research to promote the development of its members.

X. Future status of the Territory

A. Position of the territorial Government

79. The issue of political status for the island has not been addressed since the new Governor, Felix Camacho, took office in January 2003. In the Governor's state of the island addresses of May 2003 and February 2004, the subject was not mentioned. However, in a letter dated 8 January 2004 addressed to the Decolonization Unit of the Department of Political Affairs of the Secretariat, the Guam Commission on Decolonization, which is chaired by the Governor, informed the United Nations that:

> "The Non-Self Governing Territory of Guam will be holding a plebiscite on 2 November 2004, to determine its future political status. This plebiscite is being funded and authorized by the Guam Legislature through Public law No. 23-147, codified at 21 GCA §21101 et seq.
>
> "The administering Power for the Non-Self Governing Territory of Guam continues to ignore the right to self-determination of the colonized Chamorros. However, the Guam Legislature recognizes and acknowledges the inherent right to self-determination by the Chamorros, and, thus, the funding of the plebiscite by the Guam Legislature.
>
> "The Commission on Decolonization is requesting that the United Nations send a mission to monitor the self-determination plebiscite, as prescribed by the United Nations covenants and conventions."

B. Position of the administering Power

80. In a statement made at the 72nd plenary meeting of the General Assembly on 9 December 2003 (see A/58/PV.72), a representative of the United States said that the United States could not support the draft resolution (A/58/L.21) on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. By adopting a narrow definition of decolonization, the draft resolution failed to take into account the complex reality of Non-Self-Governing Territories. For the United States, the very term "non-self-governing" seemed inappropriate for those who were able to establish their own Constitution, elect their own public officers, have representation in Washington, D. C., and choose their own economic path.

81. The United States was fully supportive when countries chose independence and was proud to welcome them as equal and sovereign partners. For Territories that did not choose independence, however, the United States also supported the right of people in those Territories to a full measure of self-government, including the rights to integration and free association. The world encompassed a variety of peoples, places and political circumstances, and that richness did not allow for just one path. The United States believed that a single standard of decolonization should not be applied to every Territory, and it called upon all Member States to respect the choices made by residents of Non-Self-Governing Territories.

82. In conclusion, he said that the United States looked forward to a significant dialogue with the Special Committee in 2004, and that it was the hope that all

parties would cooperate to achieve a reduction in the number of Non-Self-Governing Territories.

C. Consideration by the United Nations

83. On 9 December 2003, the General Assembly adopted without a vote resolutions 58/108 A and B. Section VI of resolution 58/108 B, a consolidated resolution on 11 Non-Self-Governing Territories, is devoted specifically to Guam.

Notes

[1] The information contained in the present working paper was derived from published sources, including Internet sites.

[2] *Pacific Daily News*, 9 February 2002.

[3] Bank of Hawaii, *Guam Economic Report October 2003* (see www.boh.com/econ/pdfs/gm2003.pdf).

[4] Department of the Interior, Office of Insular Affairs, *Fact Sheet*, 1998.

[5] *Pacific Daily News*, 7 October 2003 (see www.guampdn.com).

[6] http://guamlegislature.com/27th_Guam_Legislature/Public_Laws_27th.

[7] BBC Monitoring Asia Pacific, 6 November 2002; *Pacific Daily News*, "Camacho wins election" (see www.guampdn.com/news/index.html).

[8] "Governing Guam Before and After the War", Guam Political Status Education Coordination Committee, Agana, Guam, 1994, p. 137.

[9] BBC Monitoring Asia Pacific, 27 March 2002.

[10] *Pacific Daily News*, Year in Review 2003 (see www.guampdn.com).

[11] *Pacific Daily News*, 11 October 2003 (see www.guampdn.com).

[12] British Broadcasting Corporation, 6 May 2003.

[13] *Pacific Daily News*, 27 September 2003 (see www.guampdn.com).

[14] *Samoa News*, 4 December 2002.

[15] BBC Monitoring Asia Pacific, 13 January 2003.

[16] www.encarta.com, "Guam".

[17] State of our island address by Felix Camacho, Governor of Guam, on 4 February 2004; and *Pacific Daily News*, Year in Review 2003 (see www.guampdn.com).

[18] *Pacific Daily News*, Year in Review 2003 (see www.guampdn.com).

[19] www.nga.org/governors.

[20] Agence France-Presse, 14 November 2003.

[21] Agence France-Presse, and Deutsche Presse-Agentur, 13 January 2004.

[22] *The New York Times*, 10 March 2003, "Guam, Hurt by Slump, Hopes for Economic Help from Military".

[23] www.admin.gov.gu/commerce.

[24] *Pacific Daily News*, 4 October 2003 (see www.guampdn.com).

[25] *The New York Times*, 23 March 2003, "Guam Takes Steps to Reverse Setbacks".

[26] State of our island address by Felix Camacho, Governor of Guam, on 4 February 2004; and news release, Congresswoman Bordallo, 29 October 2003 (see www.house.gov/Bordallo).

[27] Guam Visitors Bureau, Department of Commerce (see www.admin.gov.gu/commerce); and Bank of Hawaii, *Guam Economic Report, October 2003*, p.18 (see www.boh.com/econ/pdfs/gm2003.pdf).

[28] *Guam Economic Report, October 2003*, p.4.

[29] News release, Congresswoman Bordallo, 10 December 2003.

[30] *Pacific Daily News*, 2 January 2002.

[31] Bank of Hawaii, *Economic Report on Guam, August 2001*.

[32] BBC Monitoring Asia Pacific, 17 June 2002.

[33] Ibid., 20 March 2003.

[34] Ibid., 16 December 2002.

[35] BBC, 11 July 2003; and State of our island address by Felix Camacho, Governor of Guam, on 4 February 2004.

[36] *Pacific Daily News*, 10 December 2001.

[37] Ibid., Year in Review 2002, "Water Contamination, Pressure Woes" (see www.guampdn.com).

[38] Ibid., Year in Review 2003, "*Problems with the Water System*" (see www.guampdn.com).

[39] *Pacific Daily News*, 21 March 2001.

[40] Ibid., Year in Review 2002, "Military Construction Projects Soar" (see www.guampdn.com); and news release, Congressman Underwood, 13 June 2001.

[41] Press release, Congresswoman Bordallo, 13 November 2003 (see www.house.gov/bordallo); and *Pacific Daily News*, 27 September 2003.

[42] BBC Monitoring Asia Pacific, 28 March 2003.

[43] BBC, 27 May 2003.

[44] State of our island address by Felix Camacho, Governor of Guam, on 4 February 2004.

[45] *Pacific Daily News*, 30 January 2002.

[46] News release, Congresswoman Bordallo, 17 December 2003 (see www.house.gov/bordallo).

[47] State of our island address by Felix Camacho, Governor of Guam, on 13 May 2003; *Pacific Daily News*, Year in Review 2003, "State of Education" (see www.guampdn.com).

[48] *Pacific Daily News*, Year in Review 2002, "Education" (see www.guampdn.com).

[49] *Pacific Daily News*, 10 April 2003; and *Pacific Daily News*, Year in Review 2003, "State of Education" (see www.guampdn.com).

[50] United States Department of the Interior, Office of Insular Affairs, "Report on the State of the Islands", 1999, chap. 4.

[51] News release, Congresswoman Bordallo, 17 December 2003 (see www.house.gov/bordallo).

[52] *Pacific Daily News*, 11 January 2002.

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American Samoa

Working paper prepared by the Secretariat

Contents

		Paragraphs	Page
I.	Background information	1-3	3
II.	Constitutional, legal and political issues	4–14	3
III.	Budget	15–18	6
IV.	Economy	19–36	6
	A. General	19–23	6
	B. Agriculture and fisheries	24–25	7
	C. Tourism	26–29	8
	D. Transport and communications	30–35	8
	E. Water, sanitation system and utilities	36	9
V.	Social conditions	37–55	9
	A. Labour	37–41	9
	B. Education	42–45	10
	C. Public health	46–51	11
	D. Crime	52–55	12
VI.	Environment	56–57	13
VII.	Relations with international organizations and entities	58–60	13

04-27284 (E) 020404

VIII. Future status of the Territory 61–66 14
A. Position of the territorial Government 61–62 14
B. Position of the administering Power 63–65 14
C. Consideration by the United Nations 66 14

I. Background information

1. American Samoa[1] is located in the South Pacific approximately 3,700 kilometres south-west of Hawaii and 4,350 kilometres north-east of Australia. It consists of seven islands (Tutuila, Aunuu, Ofu, Olosega, Tau, Swains and Rose) and several lesser islands belonging to the Samoan group. The total land area is 197 square kilometres, about 70 per cent of which is covered by dense forest. Tutuila, where Pago Pago, the capital, is located, is the largest island; it constitutes 70 per cent of the total land area and is home to 90 per cent of the population.

2. It is generally believed that the Samoan archipelago was settled some 3,000 years ago by people migrating into the Pacific from South-East Asia. The Dutch were the first Europeans to find these islands, in 1722. Some settlers came to the islands in the early 1800s, followed by missionaries in 1830. By the late 1800s, internal strife among the chiefs and struggles among the colonial Powers of Germany, Great Britain and the United States of America led to a period of instability. Deeds of cession of these islands to the United States were formally accepted by means of an Act of Congress on 20 February 1929. Pursuant to this Act, the native inhabitants were given the status of American nationals. The Act provided for an American Samoan Government with all civil, judicial and military powers to be vested in a designee of the President of the United States. As the American interest in the area had been mainly military, the Territory was placed under the jurisdiction of the United States Navy. In 1951, an executive order transferred authority over the Territory to the Department of the Interior.

3. According to the releases of the census conducted in 2000 and published in February 2002, provided by the administering Power, the population of American Samoa was 57,291, of which 51.1 per cent was male and 48.9 per cent was female. The annual population growth rate is 2.64 per cent. Since 1990, the population has increased by 22.5 per cent. Ethnically, the population breaks down into 91.6 per cent native Hawaiian and other Pacific Islanders (including 88.2 per cent Samoan and 2.8 per cent Tongan), 2.8 per cent Asian and 1.1 per cent Caucasian. Of the native population, 56.7 per cent were born in American Samoa, 6.3 per cent in the United States, and 36.1 per cent were foreign born. Some 90.6 per cent of the population 5 years of age and older speaks Samoan, which is closely related to Hawaiian and other Polynesian languages, and English; and 2.9 per cent speaks English only. The literacy rate is 97 per cent. The median age is 21.3 years. Life expectancy is 75.32 years, with male life expectancy at 70.89 years and female life expectancy at 80.02 years. The annual birth rate is 24.88 births per 1,000 population and the annual death rate 4.31 deaths per 1,000 population. The annual net migration rate is 3.58 migrants per 1,000 population.

II. Constitutional, legal and political issues

4. American Samoa is a Non-Self-Governing Territory under the administration of the United States of America. The Constitution adopted in 1960 was revised in 1967 and was subsequently amended in 1970 and 1977. Any amendments or modifications to the Constitution of American Samoa (as approved by the Secretary of the Interior) may be made only by an act of the United States Congress. In 1978, the people of American Samoa for the first time elected their own Governor. Since 1981, American Samoa has also elected, by direct vote, a non-voting delegate to the

United States House of Representatives, who can, however, vote in committees. The most recent election was held in November 2002 (see para. 8).

5. The new Governor of American Samoa, Togiola T. A. Tulafano, was sworn into office in April 2003 following the sudden death of the previous Governor.

6. As American Samoa is an unincorporated and unorganized Territory of the United States, not all provisions of the United States Constitution apply. Residents of American Samoa are not United States citizens. They cannot vote in the United States general election but are permitted to participate in presidential primaries and caucuses. They are United States nationals who can freely enter the United States and work or reside anywhere they choose. American Samoa has its own immigration laws, and entry into American Samoa by foreigners is not the same as entry into the United States (in contrast with Guam, where United States immigration laws apply).[2] With respect to citizenship, according to a resolution passed in 2002 by the House of Representatives of American Samoa, children born in the Territory to foreign parents become citizens of either the mother's or the father's country of origin, not United States nationals.[3]

7. In February 2003, the new Immigration Law of American Samoa came into force, changing eligibility requirements for permanent resident status in American Samoa in certain categories, and giving the Attorney General, instead of the government-appointed Board, full authority over granting eligibility. This change allows many individuals who reside in the Territory for a long period of time to acquire permanent resident status.[4]

8. The Constitution provides for separate executive and legislative branches and an independent judiciary. All American Samoans over 18 years of age are eligible to vote. The executive branch comprises a Governor and a Lieutenant-Governor elected for four-year terms by universal adult suffrage. The Governor is responsible for executing both American Samoan and United States laws and has veto power with respect to legislation passed by the Fono. The Fono is a bicameral legislature, which comprises an 18-member Senate whose members are chosen by 14 traditional tribal councils, and a 21-member House of Representatives, with the members elected by popular vote. Only *matais* (or chiefs) can become senators. Senators hold office for a four-year term, and representatives for a two-year term. The Fono may pass laws with respect to all local affairs, provided its laws are not inconsistent with United States laws in force in the Territory or with United States treaties or international agreements.

9. As was reported in the previous working paper (A/AC.109/2003/12, para. 8), the latest general election was held in the Territory in November 2002. At the same time, in the election for the United States Congress, none of the candidates reached the required 50 per cent plus one vote in the first round. Later in November, a run-off election took place and Eni F. H. Faleomavaega won his eighth consecutive two-year term.[5]

10. In 2003, Congressman Faleomavaega proposed a change of the federal legislation that would introduce a plurality vote instead of a majority vote in elections in the Territory. Under the current system, a candidate can be elected if he or she obtains a majority of more than 50 per cent of the votes. Should no candidate pass this threshold, a run-off election is to be held two weeks later. The supporters of the proposed change maintain that due to the time constraints, a run-off election

would exclude absentee voters, such as those in military service. Under the proposed plurality voting system, a candidate who receives the most votes would be considered elected. The opponents of the proposal maintain that under such a system an elected Governor, Lieutenant-Governor and Congressman, might represent a minority of voters.

11. The discussion of the proposed federal legislation on elections in the Territory once again brought to light the question of whether federal laws are applicable to the Territory and whether decisions affecting the Territory can be taken at the federal level. Several territorial Senators who opposed the bill considered it essential to have input from the local leaders to any proposed legislation or even argued that the Territory should adopt its own voting laws. A letter to this effect was sent to the United States Congress. Another proposal was to work with local leaders to establish primaries and legalize the party system.[6]

12. The main business of the Government is the management and distribution of federal income and capital subsidies. The traditional communal system provides the basis for a strong Government whereby leaders are responsible not only for preserving the social order but also for the economic welfare of the extended family. The federal Government underwrites most of the cost of preserving this system. This affiliation allows the United States to have access to and use of the Territory for defence and other purposes. The number of employees in the Government reached almost 30.9 per cent of the entire employed civilian population 18 years and older.[7] The Government also manages power, water and sewer systems through the American Samoa Power Authority.

13. The judiciary system consists of the High Court, with the Chief Justice and the Associate Justices appointed by the Secretary of the Interior, and the local District and Village Courts, with the judges appointed by the Governor. The current Chief Justice is the first native Samoan to be appointed to the position. The High Court is divided into Appellate, Trial and Land and Titles. Since American Samoa is not part of a United States federal judicial district or circuit, there are no statutory provisions for appealing decisions of the High Court. American Samoa laws are textually identical to United States laws ("mirror laws"), where all references to the United States are substituted by references to American Samoa.

14. As was reported in previous years (A/AC.109/2002/12, para. 10; A/AC.109/2003/12, paras. 11-14), the question of applicability of the United States federal jurisdiction in the Territory has been widely discussed at the local and federal levels in connection with the Daewoosa Samoa garment factory and medical insurance fraud cases (see below, paras. 40 and 52-55). Discussions have also been held in connection with the changes in the federal Child Tax Credit law, which demanded that the tax return claims for dependent children be partially paid by the territorial Government. In his first State of the Territory address, the new Governor reported that of the 2003 fiscal year surplus of $2.7 million, the Government had to allocate $1.3 million to pay out the federal Child Tax Credit, as ordered by the High Court decision. He reminded the lawmakers that his predecessor had submitted legislation to the Fono that would delete child tax from local tax law, but that it had been rejected. He also announced that he was planning to resubmit similar legislation in 2004.[8]

III. Budget

15. The territorial budget consists mainly of federal grants-in-aid, the annual federal allocations through the Department of the Interior and locally generated revenue. In recent years, the Government experienced revolving financial difficulties (see A/AC.109/2002/12, para. 11, A/AC.109/2003/12, paras. 15-17), which were partially alleviated by the money received by the American Samoa Government as part of the Federal Tobacco Industry class-action lawsuit settlement, as well as through the efforts to streamline the work of the government offices.

16. According to press reports, in March 2003, preliminary figures indicated that there had been a $21 million surplus on the balance of payments in 2002. As was mentioned earlier, the actual surplus for 2003 totalled $2.7 million. According to the new Governor of American Samoa, measures undertaken during the past eight years by his predecessor and continued by him to improve the Government's financial status through fiscal reform have paid off. The positive results have been achieved mainly by joint efforts of both the legislative and executive branches of the Government. For the second consecutive fiscal year, the Government was in the black and at the close of 2003 had an excess of $1.4 million. The increase in revenue was attributed to the collection of corporate and individual taxes, indirect costs and fees. The custom collections raised $23 million, which, according to the Governor, could have been more, as at present only 47 per cent of the containers that come to the Territory were checked and assessed duly. The number of government employees was reduced from 5,000 in 1997 to 4,300 although the 2003 budget had provisions for 5,500 positions.

17. The Government's fiscal year 2004 budget[o] of $232.6 million is up $10.4 million from the previous year. The current budget includes $33.3 million in subsidies from the Department of the Interior, $68 million in federal grants, local revenue will provide $58.5 million and the local Enterprise Fund will make up $72.6 million. The projected local revenue for 2004 remains at the level of the previous year. According to the Governor, the budget figures reflect the continuation of the fiscal policy instituted by his administration, which aims to restore fiscal integrity and limit spending to identified and budgeted revenues.[10]

18. In January 2004, the Government discussed and endorsed preliminary budgets for 2005 and 2006. The total estimated budget for 2005 stands at $232.02 million. The details will be submitted to the Fono in July 2004.[11]

IV. Economy

A. General

19. Economic activity in general is strongly linked to the United States. About 93 per cent of American Samoa's economy is based on United States federal expenditures and the canning industry, while the remaining 7 per cent stems from a small tourism industry and a few businesses that sell exclusively to the local market. Prospects for agricultural development are limited owing to the small amount of land suitable for cultivation. The largest trading partner of American Samoa is the United States, followed by New Zealand, Australia and Fiji. Imports are mainly food

and petroleum products, machine parts, building materials, textiles and clothing. Canned tuna accounts for 97 per cent of exports.

20. Tuna fishing and tuna processing plants are the backbone of the private sector, with canned tuna as the primary export, meeting 20 per cent of the United States market. This sector employs a third of the people. The Government employs another third. Attempts by the Government to develop a larger and broader economy are constrained by American Samoa's remote location, limited transportation and devastating hurricanes, as well as competition from neighbouring islands with lower wage levels and from larger, more efficient businesses in the United States.

21. According to the new Governor, the Territory's economy in 2003 was healthy, with exports exceeding imports, preventing a trade deficit, thanks mainly to the tuna industry. Imports totalled $324.7 million versus exports of $495.5 million, creating a surplus of $134.8 million. He also noted that 394 new businesses and 800 new jobs were added to the local economy. At the same time, the cost of living continued to climb, increasing by 5 per cent compared to the previous year. The increase is mainly attributed to food and petroleum prices, which are beyond local control.

22. In order to support a healthy financial state, according to the Governor, it is necessary to continue efforts at economic diversification with steps towards e-commerce, processing industry, import substitution and export earning initiatives, ecotourism, and air and surface transportation improvement. The Governor approved two courses in e-commerce to be introduced in the American Samoa Community College.[12]

23. In order to stimulate economic development, the United States Department of the Interior organized the Insular Affairs Summit in September 2003, as the first Investment Development Conference for the United States Territories. The participants in the Conference included top officials from the Territories, the Federal Government, international financial institutions, and potential local business partners. Addressing the summit, the United States Secretary of the Interior referred to American Samoa as the only United States Territory south of the equator, home to the largest tuna canning operations in the world, namely StarKist and Chicken of the Sea, as well as one of the best natural harbours in the Pacific. She also noted that American Samoa is known for its strong cultural traditions that continue to govern everyday life.[13]

B. Agriculture and fisheries

24. Agriculture, hunting, forestry and fishing employ less than 3 per cent of the population and provide little surplus for export. The most important crops include taro, coconuts, bananas, oranges, papayas, breadfruit and yams. According to the Department of Agriculture, at present the Territory covers 95 per cent of its food needs through imports.

25. The fishing industry constitutes 90 per cent of the Territory's economy and employs one third of its workforce. American Samoa's tuna processing industry is the fourth largest in the world. The industry is an important source of government revenue, with corporate taxes from the StarKist facility alone totalling $3 million in 2003. As was reported previously (A/AC.109/2003/12, para. 24), the Government had expressed concern about the Andean Trade Preference Act, which could have a

strong negative effect on the tuna industry of American Samoa. During the reporting period, the Government and the American Samoa delegate to the House of Representatives, continued to lobby for the protection of the Territory's tuna industry through a variety of measures that include the extension of tax credits, grants and other incentives. At the same time, in March 2003, the Senate approved a bill to levy a 20 per cent tax on foreign tuna meat sold to the Territory's canneries, prompting criticism from cannery interests.[14]

C. Tourism

26. Despite the Government's efforts to encourage tourism, the industry remains small. American Samoa has little tourist infrastructure, with only one hotel (80 per cent government-owned) and a total of 260 hotel/motel rooms in Tutuila and Mau'a and a number of small hotels.

27. The official web site of the Office of Tourism notes that American Samoa is in the initial stages of tourism development. The main attraction is the sand, sun and coral seas. There is also hiking and fishing.

28. Around Christmas time international cruise ships stopped in the Territory. During the 2003/2004 New Year season five such stops, including the Queen Elizabeth, visited the Territory. The ships were met by the usual local activities of entertainment by dance groups and the local handicraft market.[15]

29. During 2003, a controversy surrounding taxi fares and the overcharging of tourists received attention in the press. In answering the complaints of customers, who are mainly tourists, the drivers pointed out that the taxi fare had not been adjusted for the preceding 12 years.

D. Transport and communications

30. There are approximately 150 kilometres of paved roads and 200 kilometres of secondary roads in American Samoa. The highway system is generally in poor shape owing to the effect of hurricanes, the age of the roads and inadequate maintenance.

31. Pago Pago harbour is an all-weather deep-draught harbour. The main dock is 1,000 feet long, handling ships of up to a 32-foot draught. Pago Pago harbour provides the full complement of equipment and facilities and has a ship repair facility with a 3,000-ton marine railway.

32. There are four airports in the Territory, situated on the islands of Tutuila, Ofu, Olosega, and Ta'u. Pago Pago International Airport is owned and operated by the territorial Government. It is regularly served by a number of airlines that link American Samoa with Hawaii and the United States mainland and other countries in the South Pacific. Hawaiian Air provides direct air service from Pago Pago to Honolulu. Polynesian Airlines, Air New Zealand and Air Pacific provide regional air service to New Zealand, Australia, Fiji, Vanuatu, Tonga, New Caledonia, Tahiti and the Cook Islands. The national airline, Samoa Air, flies to Tonga and other destinations and is available for charter. Domestically, Samoa Air flies regularly to Ofu, Olosega, and Ta'u Islands, and makes several flights a day to Samoa. American Samoans travel very frequently by air.

33. In 2003 the airline industry received further additions with Aloha Airlines entering the Honolulu-Pago Pago market, and four airlines — including two from Honolulu — interested in operating domestic flights. By the end of 2003, in an attempt to win a larger market share, Aloha Airlines also offered discount programmes for trans-Atlantic and inter-island flights.[16]

34. Addressing the Interagency Group during the Insular Affairs Summit in September 2003, the Governor of American Samoa referred to the hardships imposed upon the Territory by air cabotage rules, which restricted the ability of foreign airlines to serve the Territory. He asked for a limited exemption to the cabotage rule for American Samoa because this isolated Territory was heavily dependent on air travel.[17]

35. American Samoa, through the overseas communications satellite corporate link, has direct telephone dialling to most countries. There is a choice of mobile telephone service providers. Internet service to the World Wide Web is provided by the territorial Government's Office of Communications. The Territory has four radio stations and a government-owned television station; two privately owned newspapers, a government-owned TeleCommunications Authority and the privately owned Blue Sky Communications.[18]

E. Water, sanitation system and utilities

36. The American Samoa Power Authority (ASPA), which is government-owned, provides water, waste-water, solid-waste, and electric services to customers on five of the seven islands. ASPA provides safe drinking water to 90 per cent of the Territory from 57 wells, with the remaining part being serviced by outer-village systems. It is responsible for restoring, maintaining and protecting the water supply during natural and man-made breakdowns. The daily capacity of the water system is 8 million gallons per day from high-quality groundwater and surface sources, half of which is consumed by the food processing industry. According to the Government, the drought that struck the Territory two years ago prompted measures to improve the infrastructure and to better maintain the existing facilities. Efforts at improving infrastructure and training additional personnel are being continued.[19]

V. Social conditions

A. Labour

37. The Territory is characterized by low per capita income and a significant unemployment rate. The total labour force of American Samoa consists of 17,664 workers. About one third of the labour force consists of aliens, mostly from Samoa. The largest employer, with approximately 4,282 employees, is the American Samoa Government. The Territory's per capita income is $4,357 and the unemployment rate is 12 per cent.

38. American Samoa is one of the two United States Territories in which employers are allowed to pay workers less than the mainland minimum wage to ensure compatibility with the prevailing cost of living. Wages in the Territory are set not by federal law but by recommendation of a special United States Department of

Labor committee that reviews economic conditions every two years and establishes minimum wages by industry under the Fair Labor Standards Act. As of October 2002, the wages are as follows: government employees at $2.77; fisheries at $3.26; and shipping and transportation at $4.09.

39. As was reported in the previous working papers (A/AC.109/2002/12, para. 30; A/AC.109/2003/12, paras. 38-40), the Government sponsored an attempt to launch a garment manufacturing sector involving foreign workers. The mistreatment of the workers by the factory management led to a class-action suit and the case against the owner of Daewoosa garment factory.

40. In March 2003, the Honolulu federal jury issued its verdict on the Daewoosa case. The defendants were found guilty and were expected to be sentenced in July 2003.[20] However, by the end of 2003, the three-year-old Daewoosa case had not yet seen its conclusion. Two people in the case received prison sentences of four years and three months, and five years and ten months, and two former managers were acquitted. At the same time, the sentencing of the former owner of the factory who was found guilty of 11 counts of involuntary servitude, as well as conspiracy, extortion, and money-laundering, was further delayed until the spring of 2004. The defence still maintains that federal law provides for the High Court of American Samoa to hear cases involving crimes within the Territory and that the Government had no right to bring the defendant to Hawaii.

41. As was reported previously, the applicability of federal jurisdiction to this case was questioned by the defence and some observers from the outset of the case (see para. 14 above, and A/AC.109/2003/12, paras. 38-40).[21]

B. Education

42. Education is compulsory between 6 and 18 years of age. The educational system in American Samoa is broadly based on the United States pattern. There are 30 public primary, 6 private and 160 village schools.

43. As was reported in the previous year (A/AC.109/2003/12, para. 42), American Samoa had the lowest average score in the National Assessment of Educational Progress administered nationwide by the federal Department of Education.

44. American Samoa Community College offers two-year degree courses in arts and sciences and programmes offering certificates of proficiency in vocational and clerical skills, business and nursing. San Diego State University offers bachelor and master's degree programmes in Tutuila, which enable the student to obtain an advanced college degree without moving off-island.

45. In 2003, the Territory received $18 million through the United States Department of Education and an additional $6 million from the Department of the Interior for Special Education Programmes. According to Congressman Faleomavaega, unlike in any other State, the federal Government provides 90 per cent of the cost of education for American Samoa children, which is $2,800 or more of federal aid on a per-student basis.[22]

C. Public health

46. Most social programmes in the Territory, including those related to public health, are funded by the federal Government. The main hospital in the Territory, the Lyndon Baines Johnson Tropical Medical Center, has 140 beds and a staff of 25 physicians. Medical, dental and pharmaceutical services are available 24 hours a day. For serious cases, off-island treatment, including hospitalization in Guam, Hawaii or the United States mainland, is provided. In 2002, the Medical Center sharply increased the fees for its services, including ambulance, hospital beds, wheelchairs, oxygen, etc. This move had been actively discussed in the local press and in public hearings. The hospital is partially funded through the subsidies of the Department of the Interior and the local government and used to provide services at minimum fees. However, according to the hospital authorities, the increase was needed to cover the operational costs, equipment, doctors' wages and inherited debts. The Medical Center received $82,000 for interior reparations and maintenance.[23]

47. During the reporting period, the Lyndon Baines Johnson Hospital financial situation continued to require attention. Medicare conducted an audit of the cost reports filed by the Lyndon Baines Johnson Tropical Medical Center for fiscal years 1999 to 2002, which revealed that there were considerable disallowed costs included in the billing that, according to the report, amounted to $2.3 million. As a result, Medicare sent a notice-of-payment recession of funds for the current year. With the forecasted revenue from Medicare for 2003 at $7.2 million, the immediate impact was the loss of revenue of approximately $3.1 million.

48. In August 2003, the hospital reported an outstanding debt of $6.9 million, which included $1.7 million in taxes owed the federal Internal Revenue Service, $700,000 to the Government Treasury Department, more than $350,000 to the American Samoa Power Authority and $2.1 million to an off-island medical supplier. In October 2003, the Governor requested and received the Fono's approval for $5 million to bail out the hospital from debt. Later in the year, the Governor announced plans to amend the composition of the hospital's Board of Directors, as well as to add the second storey to the existing building.[24]

49. In September 2003, the American Samoa Department of Health received more than $1.15 million from the United States Department of Health and Human Services to help prepare for response to terrorism and other public health emergencies such as disease outbreak surveillance and epidemiology, and biological lab capacity education and training.[25]

50. American Samoa was included in the Medicare Prescription Drug Improvement and Modernization Act 2003 passed at the end of the year. According to Congressman Faleomavaega, the new legislation creates voluntary prescription drug benefits for seniors and addresses the needs of the Territories in two ways. First, the new law will give access to discounts through the prescription drug card programmes to eligible individuals, and secondly, it will provide transitional assistance for low-income persons. The amount of money that American Samoa will receive will be determined by the number of eligible individuals residing in the Territory.

51. At the beginning of 2004, the United States Government Commission recognized that a community-based outpatient clinic was needed in American Samoa

to look after the thousands of Navy veterans living in the Territory. According to Congressman Faleomavaega, who presented the bill, more than 5,000 veterans live in American Samoa and over 1,000 are in the veteran's health-care programme. All of them, including seriously ill patients, have to travel 2,300 miles to the nearest facility in Hawaii to receive medical attention. In its final report to the Secretary of Veteran Affairs, the United States Government Commission recommended that a clinic be set up in Pago Pago as a matter of urgency.[26]

D. Crime

52. According to local press reports, the issues of accountability and transparency by the local Government in the use of funds, corruption or abuse of power have permanent presence in the political picture. In particular, on 1 May 2003 the fate of $30 million of insurance settlement money received by the Territory was questioned by some of the Fono representatives. With the Government claiming that $14 million went to legal fees, the whereabouts of the remaining $16 million was unclear.[27]

53. During the reporting period, allegations of corruption were made against government officials on several occasions. The Senate Select Investigative Committee was established in the Territory in July 2003 with the authority to review the illegal and corrupt practices being reported in various Departments of the Government. The Committee consisted of six members, initially approved by the Senate, and conducted its investigation for five months, during which two government department directors had to resign. Several Department of Education employees were suspended, in particular for involvement in the corruption scandal with the federally funded school lunch programme. At the same time, several months later the former director of the Department of Education was rehired as special assistant to the director of the Office of Territorial and International Criminal Intelligence and Drug Enforcement, which gave rise to a great deal of criticism.

54. In September 2003, the Senate ordered an official investigation of the contracts awarded by the Chief Procurement Officer and senior officials from the Department of Health and Human Services and the Department of Education.[28]

55. In December 2003, the Senate Select Investigative Committee informed the Governor of its intention to request federal assistance in the absence of local investigation into allegations of abuse and misuse of public funds by a number of government officials. The Chairman of the Committee expressed disappointment that the Attorney General and the Commissioner for Public Safety had not started the criminal investigation of individuals named by the Committee on the grounds of insufficient evidence. According to the Committee's Chairman, while his Committee's task was to expose fraud, it was the responsibility of the Attorney General or the Commissioner to conduct criminal investigations for evidence before prosecution could be initiated. The letter addressed to the Governor was copied to the federal offices, including the United States Attorney General and the Federal Bureau of Investigation.[29]

VI. Environment

56. According to the World Wildlife Fund, American Samoa contains 1 of the 10 most vulnerable forests in the world and only 0.2 per cent of the forest is protected. The Forest Service of the United States Department of Agriculture, in partnership with the territorial Government, has been implementing a number of programmes aimed at promoting the health and productivity of the Territory's forest lands. These programmes are focused on public education and tree planting, agroforestry, water resources, coastal stabilization, community beautification, late successional rainforest tree species, wood products, wildlife and conservation practices. To help mitigate the effects of human use, the American Samoa Coastal Management Program was established for the coastal zone, which includes all land (126 miles of coast) and sea within 3 miles of the shoreline.

57. As part of the ongoing Coastal Management Program, by the end of 2003, the coral reef survey study was under way in the Territory to assess the economic value of the reefs and other coastal habitats. The study, conducted by the United States Government, also aims at assessing the importance of the reefs and their fish resources to the traditional way of life of the population. By the dollar value on these resources, the study is intended to help the inhabitants of the Territory to have a better long-term perspective for preserving and using these valuable resources.[30]

VII. Relations with international organizations and entities

58. American Samoa is a member of several regional organizations, including the South Pacific Commission, the Pacific Basin Development Council, the Pacific Tuna Development Foundation, the Pacific Islands Association, the Asian-South Pacific Bureau of Adult Education, the Pacific Asia Travel Association, the South Pacific Regional Environment Programme and the Council of Pacific Arts. It also belongs to such United States organizations as the National and Western Governors' Conferences. The Government of American Samoa has signed memorandums of understanding with the Governments of Samoa and Tonga on mutual economic cooperation and has sent trade missions to a number of countries in the Pacific region.

59. American Samoa belongs to various regional bodies of the United Nations system, including the World Health Organization (WHO), the Regional Office for the Western Pacific and the WHO Pacific Regional Centre for the Promotion of Environmental Planning and Applied Studies. The Territory has been an associate member of the Economic and Social Commission for Asia and the Pacific since 1988.

60. In October 2002, American Samoa joined the South Pacific Applied Geoscience Commission. The Territory is reportedly seeking assistance from the Commission in the development of its water resources and advice on reducing the risk of natural disaster.[31]

VIII. Future status of the Territory

A. Position of the territorial Government

61. In a statement made in 1993, the Lieutenant-Governor of American Samoa indicated that American Samoa preferred to remain a Territory of the United States (see A/AC.109/1159, paras. 25-31). This position remains unchanged.

62. According to press reports, American Samoa Congressman Faleomavaega and Governor Tauese Sunia both favoured that the Territory be taken off the United Nations list of Non-Self-Governing Territories. However, they expressed different views on the process to achieve that goal. According to the Congressman, after public discussion, the American Samoans should be allowed to express their views in a referendum.[32] According to the Governor, American Samoa had made its position abundantly clear and there was no need to prolong the discussion but rather to move forward with the delisting process.[33]

B. Position of the administering Power

63. In a statement made to the General Assembly at its 72nd plenary meeting, on 9 December 2003 (A/58/PV.72), a representative of the United States said that the United States could not support the draft resolution (A/58/L.21) on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. By adopting a narrow definition of decolonization, the draft resolution failed to take into account the complex reality of Non-Self-Governing Territories. For the United States, the very term "non-self-governing" seemed inappropriate for those who were able to establish their own constitution, elect their own public officers, have representation in Washington, D.C., and choose their own economic path.

64. The United States was fully supportive if countries chose independence and was proud to welcome them as equal and sovereign partners. For Territories that did not choose independence, however, the United States also supported the right of people in those Territories to a full measure of self-government, including the rights to integration and free association. The world encompassed a variety of people, places and political circumstances, and this richness did not allow for just one path. The United States believed that a single standard of decolonization should not be applied to every Territory and it called upon all Member States to respect the choices made by the residents of Non-Self-Governing Territories.

65. He said that the United States looked forward to a significant dialogue with the Special Committee of 24 in 2004, and that it was their hope that all parties would cooperate so that a reduction in the number of Non-Self-Governing Territories could be achieved.

C. Consideration by the United Nations

66. On 9 December 2003, the General Assembly adopted without a vote resolutions 58/108 A and B, section I of resolution 58/108 B being devoted specifically to American Samoa.

Notes

[1] The information contained in the present working paper has been derived from information transmitted by the administering Power under Article 73 *e* of the Charter of the United Nations, and from published and Internet sources.

[2] Bank of Hawaii, 1997 economic report: American Samoa.

[3] BBC Monitoring Asia Pacific, 27 September 2002.

[4] *Samoa News*, 4 February 2003.

[5] Ibid., 2 December 2002.

[6] Ibid., 27 August, 3 September, 6, 7, 9 October 2003, www.house.gov/faleomavaega.

[7] United States Census Bureau (www.census.gov/census2000/americansamoa.html), 28 January 2002.

[8] *Samoa News*, 22 January 2004.

[9] Covers period from 1 October 2003 to 30 September 2004.

[10] *Samoa News*, 1 October 2003, 22 January 2004.

[11] Ibid., 16, 29 January 2004.

[12] Ibid., 20, 21, 23 January 2004.

[13] www.doi.gov.

[14] *The Europa World Year Book*, "The Pacific Islands", p. 920.

[15] *Samoa News*, 16 January 2004.

[16] Ibid., 31 January 2004.

[17] www.doi.gov, 10 September 2003.

[18] www.pacificislands.cc.

[19] www.aspower.com.

[20] *Samoa News*, 28 February 2003.

[21] *The Honolulu Star-Bulletin*, 28 February 2003; http://starbulletin.com.

[22] www.house.gov/faleomavaega.

[23] www.asg-gov.com, 21 November 2002.

[24] *Samoa News*, 2 October 2003, 22 January 2004.

[25] www.house.gov/faleomavaega.

[26] www.house.gov.faleomavaega; www.portfocus.co.nz, 20 February 2004.

[27] *Samoa News*, 11 May 2003.

[28] *The Europa World Year Book*, "The Pacific Islands", p. 920.

[29] http://pidp.eastwestcenter.org/pireport/2003/December/12-08-12.htm; *Samoa News*, 13, 26 January 2004.

[30] www.portfocus.co.nz, 8 February 2004.

[31] BBC Monitoring Asia Pacific, 1 October 2002.

[32] *Samoa News*, 2 August 2002.

[33] Ibid., 5 August 2002.